**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 551 OF 2021
(Ajay s/o Krishnarao Ladhawe ..vs.. State of Maharashtra, through PSO, Sitabuldi, Nagpur and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.P. Dharmadhikari, Senior Counsel assisted by Mr. U.P. Dable, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATED : 20-09-2021

The applicant is seeking bail in connection with Crime 464/2020 registered with Sitabuldi Police Station, Nagpur for offences punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. It is on the basis of complaint lodged by Mr. Nagendrasingh Thakur, that Crime 464/2020 is registered. The gist of the complaint is thus :

The complainant retired from the Forest Department of Madhya Pradesh on 15-6-2015 and received Rs.27,00,000/- as retirement benefit, which he deposited in different banks. In the year 2018, the applicant, who is a resident of Betul, came across certain advertisements on the digital screen installed on vehicles which promised attractive return on investments in AGM Corporation Company. The complainant further learnt that the said company would be conducting a seminar at the Rasoi Hotel on 01-4-2018. The complainant, accompanied by certain acquaintances, attended the seminar and learnt that the Nagpur based AGM Corporation Company which is into digital screen advertising gives attractive return on investments. The complainant names Sushil Kolhe as the Managing Director, Pankaj Kolhe as the Proprietor and Bharat Sahu as the Manager and states that the said persons conveyed that the Hon'ble Prime Minister has vision of digital revolution in the country, and the work is allotted/outsourced to AGM Corporation. The complainant was assured annual returns of Rs.84,00,000/- on investment of Rs.15,00,000/- a year. The details and the *modus operandi* to which an elaborate reference is made in the complaint, need not to be vividly described. Suffice it to state, that according to the complainant, he deposited substantial amounts in the said company and the sister concerns and after receiving certain amount, the said concerns did not return even the invested amount muchless the promised profit.

During the course of the investigation, the applicant-Ajay Krishnarao Ladhawe is arraigned as accused alongwith Sushil Ramesh Kolhe, Pankaj Ramesh Kolhe and Bharat Sahu, who are absconding till date.

The applicant unsuccessfully attempted to secure bail from the learned Sessions Judge. The bail is denied on the premise that there is *prima facie* material to establish the involvement of the applicant in the crime and that the offences extremely grave.

3. I have heard the learned Senior Counsel Mr. S.P. Dharmadhikari and the learned Counsel Mr. U.P. Dable in support of the bail application and the learned Additional Public Prosecutor Mr. N.R. Rode, who is assisted by the Investigating Officer.

4. It is trite law that at the stage of consideration of entitlement to bail, a minute evaluation of the material on record is not expected. However, brief reasons will have to be indicated as would disclose the thought process underlying the ultimate order.

5. The learned Additional Public Prosecutor Mr. N.R. Rode is absolutely right in submitting that the alleged offences are grave. It is clear that hundreds of gullible persons have lost their hard earned money, having fallen prey to the *modus oparandi* of promising unrealistically high return on investments. However, it would be necessary to examine, albeit for arriving at a *prima facie* finding, the role of the applicant-Ajay Krishnarao Ladhawe in the commission of the alleged fraud, particularly since the learned Senior Counsel Mr. S.P. Dharmadhikari and the learned Counsel Mr. U.P. Dable have strenuously, and at times, passionately argued that the applicant's role cannot be compared with the role

played by the Kolhe brothers, who are absconding.

6. The three concerns which accepted investments, and then left the investors high and dry, are (1) AGM Corporation which is a proprietary concern of Sushil Kolhe, (ii) AGM Digital Private Limited which is a company comprising eight shareholders and three Directors, including the applicant, and (iii) The Janseva Mutual Benefit Nidhi Limited, which again is a company with a similar structure. The material available in the charge-sheet reveals that while the applicant is one of the three Directors, he had no control whatsoever over the functioning of the company and wielded no effective power. The paid up share capital of Rs.10,000/- is divided in 10000 shares of Rs.1/-. While the applicant and the other six shareholders hold only 1 share of Rs.1/-, Sushil Kolhe holds 9993 shares. In response to a specific query, the learned Additional Public Prosecutor Mr. N.R. Rode fairly states, on the basis of instructions received from the Investigating Officer, that it was the Kolhe brothers, Suresh and Pankaj, who were authorised to operate the accounts which would suggest that the applicant, although named as a Director, had no effective control on the amount deposited by the investors in the said concerns.

7. Mr. N.R. Rode would invite my attention to the statements of some investors who assert that alongwith

the other accused, the applicant too played a part in inducing them to invest in the tainted concerns. In response, the learned Counsel Mr. U.P. Dable points out that it is not only the strangers that have invested in the tainted concerns, the close relatives of the applicant including his wife, have too invested in the tainted concerns and it would be erroneous to assume that the applicant was aware that the tainted concerns would leave its investors high and dry. The learned Additional Public Prosecutor Mr. N.R. Rode would submit that while as many as forty-five lacs are invested by the relatives of the applicant, it is only the applicant's wife who has received lucrative return on her investment. Mr. N.R. Rode further submits that the close relatives of the applicant have sold as many as forty-nine plots from their layout to co-accused Sushil Kolhe and the fact that the close relatives do not implicate or blame the applicant, is suspicious. I am afraid, presently there is no material on record to subscribe to the said theory. It is not shown from the material in the charge-sheet that huge amounts were transferred from the accounts of the tainted concerns to close relatives of the applicant and, at any rate, is fairly stated by the learned Additional Public Prosecutor Mr. N.R. Rode, the applicant had no control over the financial dealings of the tainted concerns.

8. Even if it is assumed, *arguendo*, that the applicant did induce some investors to deposit money with the

tainted concerns, and it is further assumed, that the applicant did so knowing that the tainted concerns will shut shop and not return the amount, with profit or otherwise, at the highest the offence which may be made out is punishable under Section 406 of the Indian Penal Code and not Section 409 of the Indian Penal Code, which would attract more severe punishment. This of course is a *prima facie* observation and it would be ultimately the trial Court which would record appropriate finding on the basis of evidence adduced.

9. The learned Additional Public Prosecutor Mr. N.R. Rode points out that substantial amount of Rs.39,00,000/- or thereabout is received by the applicant from the tainted concerns. Mr. N.R. Rode is right. But then, the said amount includes the payout, the return of investment, the commission and salary. At this stage, it would be difficult to draw an inference, even a *prima facie* one, that the said amount is received by the applicant as a co-conspirator or as his share in the proceeds of the alleged crime. I note that the prosecution is continuing with the investigation and right under Section 173(8) of the Criminal Procedure Code is reserved. It would not be appropriate to make any further observation on the inference to be drawn from the receipt of the said amount.

10. In so far as the applicant is concerned, the charge-

sheet is filed. As many as thirty-three witnesses are cited. The alleged masterminds are absconding. It would be utopian to expect an early conclusion of the trial. I have already noted that the only offence which entails, upon conviction, punishment of more than seven years is under Section 409 of the Indian Penal Code, and given the material on record, it is extremely debatable, at least qua the applicant, whether the role played by the applicant attracts the said penal provision. Again, it is made abundantly clear that this is a *prima facie* observation and the trial Court will reach appropriate conclusion, after the evidence is adduced.

11. The applicant is in custody since 31-1-2021. The applicant has no adverse antecedents and is not a flight risk. Continued incarceration would only be a pretrial punishment. In this view of the matter, a case for bail is made out.

12. The application is allowed.

13. The applicant shall be released on bail on executing personal bond of Rs.50,000/- with a solvent surety of like amount.

14. The applicant shall attend the office of the Economic Offences Wing, Nagpur every Monday, Wednesday and Friday from 11.00 a.m. to 2.00 p.m. till

30-9-2021 and shall thereafter attend the said office on the first Monday of every month from 11.00 to 2.00 p.m.

15. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

16. The applicant shall attend each date of hearing scrupulously.

17. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

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